INDEX.


| | Page. |
|---|---|
| Statement of case. | 2. |


TABLE OF CASES CITED.


| | |
|---|---|
| Bowles v Bryand, 247 SW. 276. | 12. |
| Edwards v Gates, 126 SW. 595. | 12. |
| Farmers Loan & Tr Co, v Montmory, 193 456. | 12 |
| Garza v Cavason, 213 SW. (2) 758. | 14. |
| Hamm v Hamm, 204 SW. (2) 113. | 6. |
| Hatch v Kubena, 190 SW. (2) 175. | 6. |
| Holland v Jackson, 37 SW, (2) 726. | 9. |
| Hutchins v Dresser, 196 SW 969. | 5. |
| Leonard v Hale, 177 SW. 866. | 12. |
| Maury v Turner, 244 SW. 309. | 6. |
| Morgan v McPike, 243 SW 278. | 14. |
| 203 U. S. 126. | 13. |
| Schultz v Bill, 194 SW (2) 125. | 14. |
| Schudder v Union Bank Chgo, 77 US. 331. | 6. |
| Supply Co v Vohrees, 203 SW (2) 422. | 9. |
| Ware v Ware, 194 SW (2) 399. | 9. |
| Jurisdiction. | 4. |
| Argument. 6, 10, 13, & | 15. |

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

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IN RE: ESTATE OF
JOHN L. JACKSON, Deceased

MATT ATWOOD,
PETITIONER

vs.

DAN E. LYDICK, WALTER B. SCOTT, and
ROBERT I. JACKSON,

RESPONDENTS.

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS, AND/OR THE COURT OF CIVIL APPEALS, 3RD JUDICIAL DISTRICT OF TEXAS

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## QUESTIONS PRESENTED

1st: FOREIGN WILL CASE.

2nd: DOMICILE OF TESTATOR.

3rd: LACK OF JURISDICTION.

4th: FULL FAITH AND CREDIT.

Judgment sought to be reveiwed filed on 7th day of October, 1956. Motion for rehearing overruled December 5th, 1956.

## STATEMENT OF CASE

The WILL of John L. Jackson, deceased, was probated in Los Angeles County, California, March 4th, 1926, by his wife, Sarah V. Jackson. Its value was more than Five Hundred Thousand ($500,000) dollars.

The Probate Judge that heard the case, and admitted WILL to Probate, was Duly Elected Judge of Superior Court of Los Angeles County. The testating witnesses lived in Los Angeles County, California. Question of Domicile was heard, and found that John L. Jackson, lived in Los Angeles County, California, at the time.

Mrs. Sarah V. Jackson, his wife, was appointed administratrix, with WILL annexed, without bond.

On May 26th, 1926, Certified Copy of California WILL proceedings of John L. Jackson, deceased, was filed Ancillary in Travis County, Texas. Mrs. Jackson was again appointed administratrix with WILL annexed without bond, thus affirming her California appointment.

No contest of objection was filed in Travis County, at the time. On May 28th, 1935, Lydick, et al, filed their first contest in this case, more than nine (9) years after will was probated ancillary in Travis County, Texas. When they presented their contest to Judge Matthews, of Probate Court of Travis County, he denied it, and told them if they wanted to contest the Jackson will they would have to go to California to start it.

*Page 61. Transcript of Record:*

Judge Roy C. Archer, County Judge of Travis County, Texas, found for Mrs. Jackson, of October 9th, 1934. (Judge Archer is now Chief Justice, of Court of Civil Appeals, in Austin),

*Page 62. Transcript of Record:*

Judge Roy C. Archer, again found for Mrs. Jackson, on December 13th, 1934; and found that will of John L. Jackson, was probated in California March 4th, 1926; and Probated Ancillary in Travis County, May 26th, 1926; and found that Mrs. Jackson was entitled to receive the estate, and gave her orders on Lydick, et al, to deliver estate of John L. Jackson, to her; this was after Supreme Court of Texas found Jackson had his domicile in California. (7-28-31. *Holland vs. Jackson, et al*, 37 S.W. (2) 726).

## JURISDICTION

We were unable to get relief in any of Texas' Courts; they all ERRONEOUSLY held that they had JURISDICTION; and all fell into ERROR that FOREIGN WILL CASE could be tried in Texas Court for FIRST TIME.

We argued to all the Courts: Probate Court, Travis County, August 22nd, 1955; 126th District Court, November 22nd, 1955; Court of Civil Appeals, 3rd Supreme Judicial District of Texas, September 6th, 1956; Supreme Court of Texas, November 17th, 1956; and showed to them, and all of them, that they had no JURISDICTION of John L. Jackson, deceased, FOREIGN WILL CASE; that the action taken by them, and all of them, was VOID, and without JURISDICTION, and a FRAUD on the Administratrix.

## DOMICILE OF TESTATOR

The only exception to FOREIGN WILL CASE being filed in Texas for the First time, is the DOMICILE of TESTATOR being in Texas. In this case, Supreme Court of Texas in *Holland vs. Jackson, et al*, 37 S.W. (2) 726, that DOMICILE of Jackson was in California.

THE MAIN QUESTION IS DOMICILE; the Supreme Court of Texas, settled that question; Lydick, et al, filed their contest Four (4) years after Supreme

Court of Texas found Jackson's Domicile was in California; they were in contempt of the Supreme Court.

We filed Supplemental Petition in Probate Court of Travis County, Texas, because the Supreme Court said that the administration there opened is still pending. The Supreme Court is the last word.

**NOT FILED IN PROPER COURT**

**Citations:**

*Under Sayles Rev. Statutes, Art. 3364-3365.*

> Authorizing contest of wills and suits to cancel in the proper courts, the District Court had no jurisdiction of a suit to cancel a FOREIGN WILL, certified copy of which was filed for record in a County in which lands disposed of were situated, as authorized by Art. 5353, which provides that the validity of such will may be as the original might have been since court is not the proper court within such Art. 3364-3365 which contemplates suits in the courts in which wills are probated.

*Hutchen vs. Dresser*, C.C.A. 196 S.W. 969. Con's 5 #16.

> Giving County Court Jurisdiction of Probate Court, and Art. 3433, providing provision of a probated will shall be executed unless annulled by order of Court Probating it. The County Court

has exclusive original jurisdiction over probate matters.

*Schudder vs. Union Nat'l Bank of Chicago*, 77 U.S. 331.

Matters bearing upon the execution, the interpretation and validity of contracts are determined by the law of the place the contract is made; matters connected with its performance are regulated by the law prevailing at the place of performance.

*Maury vs. Turner*, 244 S.W. 809.

Where invalid on its face, gives notice to the world that it is not authorized.

*Hamm vs. Hamm*, 204 S.W. (2) 113.

Judgment in absence of requisite jurisdiction is VOID and binds no one.

*Hatch vs. Kubena*, 190 S.W. (2) 175.

Where record without resort to evidence aliunde affirmatively shows the invalidity of judgment sought to be enforced, its invalidity may be pointed out by any one, in any kind of procedure, in any court, and at any time.

## ARGUMENT

This case was twice (2) tried in 98th District Court of Travis County, just as case was tried in

126th District Court; they say nothing about first two trials in which duly elected Judge J. D. Moore, of 98th District Court, twice denied their contest on ground of jurisdiction.

After having tried case two (2) times in 98th District Court, they attempted to have it heard by judge of another district, whom they could influence; they had no right to engage this judge from another District, after the 98th District Court had heard their contest, and denied it on ground of JURISDICTION.

*Page 23, Atwood's deposition; also Page 23, Transcript of Reocrd.* Dan Moody, put Dolan on the Bench; (Ex. Gov. Dan Moody).

When Mrs. Jackson's lawyer showed Judge Dolan, the law of limitation that after One (1) year in California the will was fiated forever; and the law does not apply to Ancillary Probate in Texas; Dolan, said "Yes, I know that is the law; but I will render judgment for them." Dolan then told Lydick's lawyer to write judgment and he would sign it.

Judge Dolan had no right to act as judge of 98th District Court; Judge Moore, the duly elected Judge of 98th District Court, had twice denied their contest on ground of JURISDICTION; they had no right to employ Judge outside of district; they had right of appeal to Court of Civil Appeals; they had shown no ground for disqualification of the duly elected

Judge of the District; and Supreme Court had already determined this case of DOMICILE for Jackson, by their opinion in *Holland vs. Jackson, et al*, 37 S.W. (2) 726.

Judge Dolan, had no jurisdiction when he rendered his opinion in this case; he had no right to entertain contest of Foreign Will in Texas for first time; his acts were without authority, were VOID, and were a FRAUD on the Executrix.

Mrs. Jackson, presented motion at end of Judge Dolan's action to dismiss for lack of authority, fraud, jurisdiction, and limitation, as more than nine (9) years had passed since will was Probated Ancillary in Travis County, Texas.

Lydick had no right to file this suit in first place; he was not an heir, had no interest in the estate of John L. Jackson, he was only Temporary Administrator. Before filing this suit he wrote Judge Matthews, of Probate Court of Travis County, Texas, letter January, 1930, saying, "I have $120,000, or more, belonging to Jackson estate, I will turn over to the Administratrix, an entire estate when ordered to do so by the Probate Court of Travis County, Texas." Thus showing he had charge and control of the entire estate, in January, 1930.

He had been ordered to turn the estate over to Administratrix, many times, but had never done so. "He

evaded the summons in ways unknown to this Executrix", and still fails to do what he promised to do in his letter to Judge Matthews.

## FULL FAITH AND CREDIT

**Citations:**

*Supply Co. vs. Vohrees*, 203 S.W. (2) 422.

> FULL FAITH AND CREDIT, means that judgment which was conclusive in State where it was pronounced is equally conclusive everywhere in State of Union.

*Ware vs. Ware*, 194 S.W. (2) 399.

> FULL FAITH AND CREDIT clause of Federal Constitution has no greater effect than to make original judgment of different State res adjudicata as if it were a court of same jurisdiction that rendered the first judgment.

*Holland vs. Jackson, et al*, 37, S.W. (2) 726. (S.Ct.)

> Sister State must give Full Faith and Credit to order of Probate as verifying will; where Testator was domiciled in State of Court granting Probate, on the ground that Foreign Probate order was entitled to Full Faith and Credit, as the authenticity of the WILL.

¶ 6. From what has already been said, it will be seen that the only subject of inquiry properly open to the trial court was as to the domicile of Jackson; if the latter was domiciled in California, the trial court was bound to give Full Faith and Credit to the Probate Order in that State, as establishing the authenticity of Jackson's will; if Jackson was domiciled in Texas, then the order of the California Court was not entitled to be registered in the State. The recital contained in the Probate Order entered in California to the effect that Jackson's domicile was there, is prima facie proof of the fact recited. Testimony to overcome this prima facie fact was introduced by the defendants in error; but the fact issue thus raised was not requested to be submitted to the jury. The issue, therefore, was waived by defendants in error. With the issue as to domicile waived, there was no basis for the trial court's refusal to give to the case Full Faith and Credit.

## ARGUMENT

The above citation plainly shows that invalid judgment has no standing in any court, regardless of time it has run; it is clear there is no limitation in this case; the Probate Court on August 22nd, 1955; nor the District Court of Travis County, November 22nd, 1955, had no jurisdiction, and their opinions were invalid and are subject to the terms of the above citation; when WILL is shown to have been Probated in California, Judgment of Texas Court in suit begun in Texas for the first time was invalid, and its invalidity may be

pointed out by any one, in any kind of procedure, in any court, and at any time. Nothing respondents can do, or say, can change that law; and when it is FOREIGN will, and has been filed in Probate Court of Travis County, Texas, and Certified Copy of Record of California Probate Court filed in Texas; it is entitled to recognition of Full Faith and Credit Rules of Federal Constitution.

Respondents have evaded the issue in this case; filed plea in abatement to keep him out of court, then complained about time case has been in court; when only delay was because of Lydick's refusal to do what he knew he should do, comply with Probate Court's Order to turn over the estate to its rightful owner; why did he change his mind after saying he would turn over $120,000, or more, of money in his hands, belonging to Jackson estate, and entire estate when ordered to do so by Probate Judge of Travis County, Texas?

## POWER OF ATTORNEY COUPLED WITH AN INTEREST

Power of Attorney coupled with an interest. By this phrase is meant a right or power to do some act, together with an interest in the subject matter on which the power is to be exercised. It is distinguished from a naked power, which is a mere authority to act, not accompanied with an interest of the donee in the subject-matter of the power.

**Citations:**

*Farmers Loan & Trust Co. vs. Wenthorp*, N.Y.S. 456.

If power has an interest it is irrevocable.

*Leonard vs. Hale*, 177 S.W. 866.

An Administrator with will annexed authorized to exercise power of attorney.

*Bowles vs. Bryant*, 247 S.W. 276.

¶ (1) A power of attorney coupled with an interest, cannot be revoked by the grantor of the power.

¶ (6) Plaintiffs in error contention that overruling the assignment was error because said assignment presented matters that were sustained by the great weight of evidence; as a matter of fact that is not within the jurisdiction of the Supreme Court to review. This case has been pending in court for nearly 18 years and we would be glad to terminate it, but the trial judge had a right to set aside the verdict of the jury as being based on insufficient evidence, that question was one that came within his jurisdiction.

*Edwards vs. Gates*, 126 S.W. 595.

As neither it, nor any subsequent act, fixes the term of administration of a decedent's estate, the

lapse of more than 15 years without an order of the probate court in the administration of an estates does not operate as an abandonment of the administration, but a sale then made by the administrator persuant to an order of the probate court is valid.

*203 U.S. 126.*

The phrase coupled with an interest in connection with power of attorney, does not mean an interest in the exercise of the power but an interest in the property which it is to operate.

## ARGUMENT

Mrs. Sarah V. Jackson, gave Matt Atwood, all the authority and power she had, by reason of being administratrix of the will of her late husband, John L. Jackson, deceased, in consideration of the interest he had in her estate, as compensation for work on, and his personal funds spent over a period of more than thirty (30) years, while it was being illegally attacked by Dan E. Lydick, et al.

## SUPPLEMENTAL PETITION

Atwood's Supplemental Petition is *not new suit*, but a continuation of efforts to get Lydick into Court to make report of all money and property that has come into his hands, or under his control, since he was ap-

pointed Temporary Administrator of the estate of John L. Jackson, deceased.

**Citations:**

*Porgean vs. McPike*, 243 S.W. 278.

Matters carried over term of Probate Court lives until disposed of.

*Schultz vs. Sill*, 194 S.W. (2) 125.

Application was made to obtain execution of judgment after five years is *not new suit*, or civil action, but is merely a proceeding or subsequent step to enforce the judgment, wherein defendant has already been cited and has appeared; and reasonable notice is all that is required to support judgment or revival or to enforce execution of judgment.

*Garza vs. Cavasos*, 213 S.W. (2) 758.

Application was made to Probate will made in 1919, a citation was issued, apparently nothing further was done for many years; in 1947 this amended application was presented to the Probate Court, citation was issued, and as result thereof the will of Habreas Longeren, was admitted to probate as a muniment of title.

## ARGUMENT

Lydick's Abatement was filed, December 3rd, 1954, and it is not proper answer to show cause order, which he had evaded so many times before; Lydick says suits which were pending May 25th, 1934, can be tried. This suit has been pending since 1926, and the Executrix has been diligent, and pursued it vigorously ever since.

This Supplemental Application is *not new suit;* Lydick's restraining order was allowed December 20th, 1934, this was almost three (3) years after the Supreme Court of Texas found against him, July 28th, 1931. He was in contempt of the Supreme Court when restraining order was filed, and he had no legal right to make the order, as its only purpose was to try to keep Mrs. Jackson from obtaining her just estate; and as administrator he should have been anxious to comply with the oath of his office, and help the rightful owner to obtain her estate, as the Court had so many times ordered him to do.

## CONCLUSION

The Supreme Court of Texas, and all of lower Courts were in ERROR, when they dismissed this case, on whatever ground, because none of them had jurisdiction, as was determined by Probate Court of Travis County, and 98th District Court, and Supreme Court

of Texas, in *Holland vs. Jackson, et al*, July 28th, 1931.

All of Judge Dolan's acts were VOID, and without jurisdiction, and in contempt of Supreme Court of Texas, when he came into the case on October 25th, 1935, and all of his acts had since that time were VOID, and without authority of law, and Supreme Court of Texas, on December 5th, 1956, was in ERROR, and without authority to overrule Appellant's motion for Reconsideration.

The Court of Civil Appeals, in Austin, did not render opinion of their own but ERRONEOUSLY adopted the conclusion of Judge Dolan, that was all wrong. We will not burden the Supreme Court of the United States with all of them, but take a few of them; First, the conclusion that Jackson did not live in California, at time; this is in direct contempt of Supreme Court finding of 7-28-1931; SECOND: Statement that case had been judicially determined against Appellants; this is not true, as determined by finding in same case. THIRD: Had no property in California, this was determined by witnesses testifying in Probating Jackson's will; FOURTH: Had no property in Travis County, Texas. This was proved by Lydick's own report 9/5/21, that he sold $7,500 worth of bank stock to Republic Bank in Austin.

None of points raised by Respondents was proper, all were based on VOID JUDGMENT; and none of

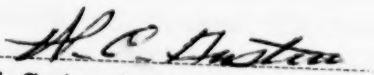
them apply in this case because it is FOREIGN WILL CASE, and was started in wrong Court.

The Contest of Constestants Dan E. Lydick, Walter B. Scott, and Robert Ingersoll Jackson, is erroneously based on the idea that they have jurisdiction of FOREIGN WILL CASE, where they filed in Texas Court for First Time, and has already been decided by the Supreme Court of Texas, *Holland vs. Jackson, et al,* 37 S.W. (2) 726.

We told all the Courts, the Probate Court of Travis County, Texas, 126th District Court, Travis County, Judge Jack Roberts; The Court of Civil Appeals, in Austin, Roy C. Archer, is Chief Justice, now. Justice Archer, former Probate Judge of Travis County, when this case was up there, found for Mrs. Jackson, also found that will was Probated in California, and further gave Mrs. Jackson, Administratrix, order on Lydick, to turn over her estate to her.

Appellant's further pray that the Supreme Court of United States, reverse this case, and send it back with instructions to have the Probate Court of Travis County, Texas, for final action; as the Supreme Court of Texas, said, "the administration there opened is still pending; that Matt Atwood be instructed to disburse estate in accordance with will of John L. Jackson, deceased; that distribution be made to all beneficiaries named in said will; and Mrs. Jackson's inter-

est be made to Matt Atwood, in accordance with terms of said Power of Attorney, from her, and we will ever respectfully pray.



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## APPENDIX I

No. 10,408

IN THE
COURT OF CIVIL APPEALS,
THIRD SUPREME JUDICIAL DISTRICT
OF TEXAS, AT AUSTIN.

MATT ATWOOD, RE: ESTATE OF JOHN L. JACKSON, DECEASED.
APPELLANT

VS.

DAN LYDICK, TEMPORARY ADMINISTRATOR.
APPELLEE.

FROM THE DISTRICT COURT OF TRAVIS
COUNTY, 126th JUDICIAL DISTRICT
No. 102,607, Honorable Jack Roberts, Judge.

### APPELLANT'S MOTION FOR REHEARING

COMES NOW, Matt Atwood, Appellant in the above numbered and entitled cause, and respectively moves the Court to set aside the judgment of this Court rendered on the 20th day of June, affirming the judgment of the 98th and 126th District Court's of Travis County, Texas, and grant him rehearing, and therefore say:

## FIRST

The Court of Civil Appeals erred when they held that the 98th and 126th Districts Courts of Travis County, Texas, had jurisdiction to contest WILL case in Texas, for the first time, where WILL was probated in State of California and certified copy of California Probate Court Proceedings were filed in Travis County, Texas.

## ARGUMENT

The California Court had Jurisdiction of the Jackson WILL case, because the attesting witnesses swore to Jackson making WILL in California; and that he had his residence in California; that he owned property in the State of California;

The Probate Judge that Probated Jackson WILL was the duly elected Judge of Probate Court in Los Angeles, California, at the time; he certified that the record in Jackson WILL case was in due form and bore the Courts Seal. Certified Copy of California Record was filed in Travis County, Texas, and was entitled to FULL FAITH and CREDIT Under The Constitution of the United States.

## VOID JUDGMENT

THE COURT of CIVIL APPEALS *ERRED* when they quoted from *VOID JUDGMENT* rendered by

Judge Dolan, in 98th District Court, when he admitted them to be VOID, and in VIOLATION of LAW, and against RULES OF PROCEDURE, and the Statute of TEXAS, when made by him in 98th District Court:

> "When told by Mrs. Jackson's lawyer, and shown that after One (1) year in California the WILL was FIATED for ever; and the law does not apply to ancillary probate in Texas; Dolan said, 'Yes I know that is the law; but I will render judgment for them'; he then told Lydick's lawyer to prepare judgment and he would sign it."

The first contest, or objection was filed in the Probate Court of Travis County, Texas, October 25th, 1935, more than Nine (9) years after suit to Probate Will was filed in Travis County, Texas, and was Twice (2) denied on ground of jurisdiction by Judge Moore, duly elected Judge of 98th District Court, of Travis County, Texas; Lydick made no effort to appeal from either of those decisions, but instead went out of District to get Judge who the lawyers recommended, to come in and try case after it had twice been denied jurisdiction, and rightfully so; Dolan knew they had no jurisdiction to contest Foreign Will when he came into the case, but he said "in spite of the law I will render judgment for Lydick; At conclusion of case before Dolan, in 1935, Mrs. Jackson's lawyers made strenuous objections, and exceptions, and gave notice of appeal, and if appeal was not perfected it

was not Mrs. Jackson's fault, and the failure to perfect appeal from Dolan's VOID JUDGMENT could not give Lydick any advantage over Mrs. Jackson, and certainly could not operate as cure for FRAUD JUDGMENT, Mrs. Jackson, would now have the right to perfect that judgment, because it is on the right side of the law.

The Court of Civil Appeals ERRED when they attempted to follow the statement's noted in Judge Dolan's VOID findings, which were not his findings, but the statements of the lawyers, which were a fraud on Mrs. Jackson; the exceptions noted in Court of Appeals are taken from Judge Dolan's VOID FINDINGS, and a fraud on Mrs. Jackson, and most of them are not true, based on Probate of California WILL; taking exceptions by number as Court of Civil Appeals;

No. 1. The Court finds that at time of his death was domiciled and had his only address at Fort Worth, Texas;

Proof of Certified Copy of Will of John L. Jackson filed in Probate Court of Travis County, Texas, proves the contrary.

No. 2. The Court finds that John L. Jackson, at time of his death was not a resident of the State of California;

Testating witnesses to Jackson's WILL prove contrary;

No. 3. The Court finds that John L. Jackson at time of his death had no property in the State of California;

Witnesses to Jackson's WILL prove this statement not true.

No. 4. The Court finds that John L. Jackson at time of his death had no property in Travis County, Texas;

The witnesses show he had $7,500.00, bank stock.

No. 5. The Court finds at time of his death John L. Jackson, had his principal estate in Tarrant and Parker County, Texas;

He owned property in both Counties.

No. 6. The record shows that this item is right.

No. 7. The Court finds that the Probate Court of Travis County, Texas, had no authority or jurisdiction to probate alleged WILL of John L. Jackson offered in evidence herein, or to grant any ancillary;

Had authority and jurisdiction by reason of FOREIGN WILL, which was put in evidence herein, and was known to Dolan, and the lawyers in the case at the time.

No. 8. The Court finds that the alleged probate of Will in California was not had within four years after the date of the death of John L. Jackson.

Lost and Found will can be probated any time in California, or Texas.

No. 9. The Court finds that this suit was instituted within FOUR YEARS after the filing of the will for probate in Travis County, Texas, by contestants herein;

The Record shows that suit was not filed until Nine (9) years after probate was filed in Travis County, Texas.

No. 10. The Court finds that this suit contesting the admitting to probate of said purported will in Travis County, Texas, was instituted within less than four years after the order was made by the County Court of Travis County, Texas, purporting to grant an ancillary probate on the purported probate proceedings in California.

Record shows that it was instituted more than Nine (9) years after probate proceedings were filed in Travis County, Texas.

No. 11. The Court finds that this suit was instituted within four years after said purported will was offered for probate in the probate court of Los Angeles County, California.

Record shows Jackson's WILL was probated in Los Angeles County, California, on March 4th, 1926. More than 9 years.

No. 12. The Court further finds that the matters involved in this suit have been judicially determined by the Supreme Court of this State and adversely to the proponents herein.

We quote from Judgment of Supreme Court, July 28th, 1931.

"Because it is the opinion of the Court that there was error in the judgment of the Court of Civil Appeals, and the District Court, it is therefore ordered adjudged and decreed, that the judgments of the Court of Civil Appeals, and the District Court be reversed and the same be remanded to the District Court for further proceedings in accordance with the opinion of this Court. That the defendants, in error, Robert Ingersoll Jackson, W. B. Scott, and Dan Lydick pay all cost in this behalf expended in this court and the Court of

Civil Appeals, and this decision, with copy of the opinion herein delivered, be certified to the District Court for observance."

WHEREFORE WE COMMAND YOU, to observe the order of said Supreme Court in this behalf, and in all things to have it duly recognized, obeyed and executed.

(Seal)

Witness the Hon. C. M. Cureton, Chief, Justice of our said Supreme Court with the seal thereof annexed, at the City of Austin, this the 28th day of July, A.D. 1931.

F. T. Connerly, Clerk,
By J. P. Byrne, Deputy.

The Item in No. 12, was not judicially determined by the Supreme Court against proponents, but was determined against defendants in error.

The Court of Civil Appeals *erred* when they affirmed the last paragraph of Dolan's judgment wherein he attacks the California Probate Court for the first time in a Texas Court, in Texas. And further affirming an order that the County Court of Travis County, Texas, purportedly granting ANCILLARY Probate Proceedings based on the Probate Proceedings in The State of California; is null and void and of no force and effect and the same is hereby set aside and it is

therefore further ordered and decreed by the Court that said purported WILL so offered for Probate be annulled and set aside and held for naught.

*THIS CANNOT BE DONE:* The Texas Court cannot successfully attack the California Court that has Probated the WILL, Certified its action to the Texas Probate Court, and provide for ANCILLARY Probate in Travis County, Texas, where the ACTION has not been contested for more than Nine (9) years; this action is without authority in law, and has no jurisdiction in the case to take such action for contesting a will that has been probated in California and there has been no contest for more than Nine (9) years.

The judgment is a fraud on Mrs. Jackson, and Matt Atwood, and is against the rules of practice, and the Texas Statutes.

## RES ADJUDICATA

**Not available to Court without Competent Jurisdiction**

The Court of Civil Appeals ERRED when they said one of the special pleas sustained by the trial court was Res Adjudicata, by reason of final judgment of the 98th District Court of Travis County, in cause No. 55,688, rendered October 28th, 1935, wherein Lydick, and Mrs. Jackson, were parties.

**Rendered by Court without Competent Jurisdiction**

RES ADJUDICATA is a legal or equitable issue which has been decided by a Court of Competent Jurisdiction.

But in order to make a matter Res Adjudicata there must be a concurrence of Four (4) conditions:

1. Identity in the things sued for;

2. Identity in the case of action;

   A judgment against an administrator for money due the estate is not a bar to a subsequent action for further sums not known by plaintiff at the time of the former action to be due.

3. Identity of persons and parties to the action;

   A judgment on a plea in abatement in an action for rent is not res adjudicata on the trial on the merits.

4. The decision of a motion as summary application is not to be regarded in the light of res adjudicata or as so far conclusion upon the parties as to prevent their drawing the same matter in question again in a more regular form of action.

THE ACTION HERE WAS ON A FRAUD JUDGMENT.

**THERE IS NO LIMITATION AGAINST VOID JUDGMENT**

Mrs. Jackson, gave Matt Atwood all the authority she had by reason of being Independent Executrix, without bond, with the will annexed, of the estate of John L. Jackson, deceased, duly and legally appointed by the superior court of Los Angeles County, California, on March 4th, 1926; the judgment rendered in such cause was one denying the application of Sarah Vestal Jackson, to probate an instrument dated May 3rd, 1913, purporting to be and offered as the last will and testament of John L. Jackson, deceased, and shown to have been previously probated in the State of California. (Probated as lost and found will).

The judgment denying the application of Mrs. Jackson, was a fraud on Mrs. Jackson, because it was a FOREIGN WILL; Lydick had notice of probating will when it was filed on March 4th, 1926, he made no effort to contest it then, and after one year it was fiated in California, and Texas; and the only way to contest it was by bill of review, if filed in time; Lydick failed to take action until Nine (9) years later, October 25th, 1935, when he filed his first objection, and then he filed it in wrong court, he should have filed it in California. The case presided over by Judge

Dolan was without authority, and lacked jurisdiction, and was fraud on Mrs. Jackson.

The fact that no appeal was perfected from VOID judgment could give Lydick no standing in the case. He had already slept on his rights by not filing contest in time. Nine (9) years is too late.

There is no limitation against VOID judgment.

Appellants respectfully pray that this motion be granted, and that the judgment of the trial court be in all things denied.

Respectfully submitted,

W. C. AUSTIN

## APPENDIX OF JUDGMENT

The Court of Civil Appeals, of Austin, Texas, wrote decree holding that Judge Dolan's holding that he had jurisdiction of California Will Case, filed for first time in Texas,

This Copy of Judgment was sent to Clerk of United States Supreme Court, Washington, D.C. with Record in the case.

## APPENDIX II

No. A-6021

IN THE
SUPREME COURT OF TEXAS

IN RE: ESTATE OF JOHN L. JACKSON, DECEASED.
MATT ATWOOD, Petitioner.

VS.

DAN LYDICK, Temporary Administrator, Respondent.

## PETITIONER'S MOTION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF

W. C. Austin,
1331 Hemphill St.
Fort Worth, Texas.
Attorney for Petitioner.

No. A-6021

IN THE
SUPREME COURT OF TEXAS.

IN RE: ESTATE OF JOHN L. JACKSON, DECEASED.
MATT ATWOOD, Petitioner.

vs.

DAN LYDICK, Temporary Administrator, Respondent.

**PETITIONER'S MOTION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF**

*TO THE HONORABLE SUPREME COURT OF TEXAS:*

**Statement of Case**

On March 4th, 1926, Sarah Vestal Jackson, filed will for Probate in the Probate Court of Los Angeles

County, California; the will was that of her husband, John L. Jackson, deceased. She was appointed by the California Court Independent Executrix without bond with the will annexed. Mrs. Jackson brought Certified Copy of will proceedings to Texas, where it was filed for Ancillary Probate in Travis County, Texas; Hon. George Matthews, admitted the will to probate May 26th, 1926, together with the order of the California Court admitting same to probate and for the issuance of letters of administration with will annexed.

Lydick made first attempt to contest Jackson's will in Texas Court, October 25th, 1935; the Probate Court of Travis County found for Mrs. Jackson; and the 98th District Court Twice (2) held that it had no jurisdiction; Judge Moore, Judge of 98th District Court had case before him just as it was heard by Judge Roberts, in 126th District Court on November 25, 1955. After hearing in 98th District Court of Travis County, Texas, Lydick went out of District to have case heard for Third (3rd) time by Judge Dolan, whom lawyers influenced, and persuaded him to find VOID Judgment for them. All the lawyers for Mrs. Jackson,

> "Objected strenuously to Judge Dolan being substituted, as all well knew he was BIASED, PREJUDICED, and UNDULY INFLUENCED, as was shown.

William A. Jackson, and Roger C. A. Vestal, were not represented, or cited, which beneficiaries both were

financially interested in the estate, and had to be cited under the law of citation; and Dan Lydick was not legally in the Probate Court, or the 98th District Courts of Travis County, Texas.

Lydick's contest was filed Nine (9) years after Ancillary case was filed in Travis County, Texas.

Lydick had no right to file case in first place, he was not an heir; had no interest in the estate; he said he had $120,000 dollars, in cash that belonged to the estate; and said he would turn over to the administrator, and entire estate when ordered to do so by Probate Court of Travis County, Texas, this letter was January 1st, 1930.

The Judgments of Judge Dolan were without jurisdiction, and were VOID. They were against Rules of Practice, and the STATUTES of TEXAS; this is Foreign Will Case, and it cannot be heard for FIRST TIME in a Texas Court. Just as Judge Moore found, he had no jurisdiction; and the lawyers all knew, and Judge Dolan knew when he went into case, he had no jurisdiction.

> When reminded by one of Mrs. Jackson's lawyers, "that after one year case was fiated forever in California; and does not apply to ancillary case in Texas." Dolan said yes, I know that is the law, but I will render verdict for them; he then told Lydick's lawyer to write judgment and he would sign it.

During time from 1935 to 1954, Mrs. Jackson made every effort to get her estate; but Lydick evaded the orders of the courts in ways unknown to Mrs. Jackson. She was diligent and tried every way possible to have Lydick obey orders of Court, he failed to obey them, yet disobeyed them many times to Mrs. Jackson's disappointment and grief; and she was taken by untimely death because of Lydick's failure to do what he should.

Matt Atwood was long time friend of Mr. and Mrs. Jackson; he worked for Mrs. Jackson a long time, and spent large sums of his personal money, before Mrs. Jackson gave him Power of Attorney; when she could not pay him. The Power of Attorney is with Interest and is not revokable. She conveyed all her interest to him. Matt Atwood will follow the instructions of the Probate Court when he gets the estate in his hands.

John L. Jackson, lived part time in California, and maintained office in Texas; Supreme Court, and Federal Courts held that his will could be duly and legally probated in either or both States.

John L. Jackson, had over Thirty-thousand ($30,000.00) dollars worth of property in the State of California at time of his death, as was shown at the proving and probating his will in the Superior Court of Los Angeles County, California, March 4th, 1926.

That John L. Jackson had $7,000.00 dollars property in Travis County, Texas, at time of his death. Dan Lydick showed in his so called report of July 5th, 1921, that he sold Forty-five shares in Citizens Bank & Trust Co. to Republican Bank, both in Austin, Tex. for $7,500.00.

Lydick's restraining order dated December 20th, 1934, could not become effective since the decision of Supreme Court was rendered against him on July 28th, 1931.

Atwood filed Supplemental Petition in this case on October 28th, 1954, for sole purpose of getting Lydick into Court to have him make report of all assets in his hands, or under his control belonging to the estate of John L. Jackson, deceased, as he had not done so before. The Supplemental Petition was filed in support of the Supreme Court Opinion July 28th, 1931. (37 S.W. (2) 726.) Reversing lower courts and affirming Probate Court of Travis County, Texas, in which it said: "The administration there opened is still pending."

(1) Matt Atwood represented in his presentation to the Probate Court of Travis County, Texas, Aug. 22nd, 1955, that Lydick's contest was based on erroneous claim; that it could not be brought for first time in Texas; that as Judge Matthews told Lydick when contest was first presented to him; "that if you want to contest John L. Jackson's will you will have to go to California to start it" that attempt to contest will

in Texas, was without jurisdiction, and a fraud on Mrs. Jackson.

(2) Atwood represented the same things to Judge Roberts in the 126th District Court, on November 22nd, 1955. That attempted contest in Texas for the firs' time, was without jurisdiction, and a fraud on Mrs. Jackson.

(3) Atwood made same representations to Court of Civil Appeals; that attempted contest of Foreign Will in Texas, for first time, was without jurisdiction, and a fraud on the administratrix.

The Supreme Court has based their "Refusal of Writ of Error, on VOID judgments of lower Courts. The lower Courts all fell in the same error, after it was brought out that Contest of Foreign Will, must be brought in the Court of Sister State Probating Will.

Besides waiting too long to bring contest; (more than 9 years) Lydick started it in wrong Court. Lydick knew and was told by Judge Matthews, that he was in wrong Court; and all lawyers that have had anything to do with the appeal of this case since have had notice, (as if they did not already know) case was filed in wrong Court, and was without jurisdiction, and a fraud on Mrs. Jackson.

On July 28th, 1931, Four (4) years before Lydick filed first contest in Texas Court, October 25th, 1935; Supreme Court of Texas, held that domicile of John

L. Jackson, deceased, was in California at time of his death; that with statement made to him, by Judge Matthews, and the finding of Supreme Court, Lydick wilfully filed his belated contest in Texas Court.

Atwood filed his supplemental petition in effort to get Lydick into Court and have him obey the many orders of Court to turn over the estate of John L. Jackson, deceased, to the administratrix, which he had never done, although he had said in letter to Judge Matthews, "he had $120,000 dollars in his hands belonging to the Jackson estate, he would turn over to administratrix, and the entire estate if ordered to do so by the Probate Court of Travis County." (this letter dated 1/1/1930.

The main issue in this case is the domicile of John L. Jackson at time of his death; that question was settled by Supreme Court in 1931, when the Court said:

> "the recitals contained in the Probate Order entered in California to the effect that Jackson's domicile was there, is prima facie proof of the fact recited. Testimony to overcome this prima facie fact was introduced by defendant's in error; but the fact issue thus raised was not requested to be submitted to the jury. The issue therefore was waived by defendants in error."

Matt Atwood has Power of Attorney from Mrs. Jackson, conveying all her interests to him, for valuable consideration. This is power with an interest, and cannot be revoked.

We will not be satisfied with the Supreme Court's finding in this case, "Writ of Error this day refused." *No Notation.* This case if of such importance, it involves more than $500,000, and if the Supreme Court finds for Lydick, we want to know what they base their decision on. We would like to know what the Appendix means: *NO NOTATION.*

We, as petitioners want to know why the Courts have not found that the opinions were based on the Statute that says that all Foreign Will Cases are to be filed in the Courts probating them; this is most important case, to us, and we base our opinion on that Statute. It was filed in Court of Texas, and should have been filed in California. Jackson's domicile is established in California, and that makes it case for Full Faith and Credit, according to the Statutes of the United States, failure to give it that status alone, makes it appealable to the United States Supreme Court. We failed to find case in any of law books that gives the entire estate to Temporary Administrator, without his being prosecuted for false representations. Here is case that is without jurisdiction, and in violation of Texas Statutes, and against rules of practice, it is not immediately understandable, please elaborate.

Respectfully submitted,

W. C. Austin, Att'y,
for petitioner.
1331 Hemphill St.
Fort Worth, Texas.

## APPENDIX OF JUDGMENT

This is to show final action of Supreme Court of Texas. There was no written opinion; notice was given writ denied by Printed Post Cart with these words added, "this day refused. No Notation".

Application for re-hearing by Printed Post Cards, Overruled.

## INDEX


| | Pages |
|---|---|
| STATEMENT OF CASE | 2-8 |
| ARGUMENT | 8-10 |
| CERTIFICATE OF SERVICE | 11 |


## LIST OF AUTHORITIES


| | |
|---|---|
| Black's Law Dictionary | 6 |
| Bowles v. Bryant, 247 S.W. 276 | 6 |
| Farmers Loan & Trust v. Wentworth, N.Y.S. 456 | 7 |
| Hamm v. Hamm, 204 S.W. (2) 113 | 5 |
| Hatch v. Kubana, 190 S.W. (2) 175 | 5 |
| Holland v. Jackson, et al, 37 S.W. (2) 726 | 2,5,6,8,10 |
| Hutchen v. Dresser, C.C.A. 196 S.W. (Con's 5 # 16) | 4 |
| Leonard v. Hale, 137 S.W. 865 | 6 |
| Maury v. Turner, 244 S.W. 809 | 5 |
| Sayles Rev. St., Art. 3364-3365 | 4 |
| Scudder v. Union Nat'l Bank of Chicago, 77 U.S. 331 | 4 |
| Supply Co. v. Vohrees, 202 S.W. (2) 422 | 6 |
| Ware v. Ware, 194 S.W. (2) 399 | 6 |

No. 816.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956.

IN RE: ESTATE OF
JOHN L. JACKSON, Deceased. MATT ATWOOD,
PETITIONER

VS.

DAN E. LYDICK, WALTER B. SCOTT,
ROBERT I. JACKSON.
RESPONDENTS.

## PETITIONER'S MOTION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF.

### STATEMENT OF CASE.

March 4th, 1926, Sarah Vestal Jackson, filed WILL of her late husband John L. Jackson, for probate in Probate Court of Los Angeles County, California. She was appointed by California Court, Independent Executrix, with WILL annexed, without bond. She brought Certified Copy of WILL Proceedings to Texas,

where she filed in Ancillary Probate Court of Travis County, Texas, May 26th, 1926. Judge Matthews, admitted WILL to Probate, together with Order of California Court, and for issuance of letters of administration with WILL annexed.

Lydick said in letter to Judge Matthews January 15th, 1930, he had no interest in Jackson's estate; he had $120,000 that belonged to estate he would turn over to Administratrix; and entire estate when ordered to by Probate Court of Travis County; thus showing he had control of entire estate in 1930.

MAIN ISSUE in this case is domicile of Jackson at time of his death; The Supreme Court of Texas settled that question against Respondents in *Holland v. Jackson, et al*, 37 S.W. (2) 726, July 28th, 1931.

With issue of domicile settled, it made Foreign Will Case, and fixed Jurisdiction by law; and denied the Respondents the right to file case in Texas Court for first time.

Another reason for denying it, contest was filed more than NINE (9) years after case was filed in Travis County; it was therefore without JURISDICTION; all Texas Courts, as well as Supreme Court of the United States, fell into the same ERROR.

Judge Matthews, Probated Jackson's WILL Ancillary May 26th, 1926, in Travis County; Respondents filed their first contest May 28th, 1935; Judge Mat-

thews, denied it, and told them if they wanted to contest Jackson's WILL, they would have to go to California to start it.

Respondents thereafter appealed to 98th District Court of Travis County, Judge Moore, Judge of that Court, held his Court was without Jurisdiction; Respondents applied to Judge Moore, 2nd time, when he again said, he would find as he did before, he had no Jurisdiction.

Dan Moody, one of Respondents' Attorneys, sought Judge Dolan of Georgetown, Texas, Moody's home town, to come into case, he knew Dolan could be influenced; to find judgment for them; lawyers, including Moody, knew they had no jurisdiction.

When Mrs. Jackson's lawyer showed Judge Dolan, the law of limitations; that after One (1) year in California WILL was FIATED forever, and law does not apply to Ancillary Probate in Texas; Dolan said, yes, I know that is the law, but I will find for them; Dolan then told Respondents' lawyers to write judgment and he would sign it.

Judge Dolan, had no right to entertain contest of Foreign Will Case in Texas, for the first time.

## NOT FILED IN PROPER COURT.

**Citations:**

*Sayles Rev. St.*, Art. 3364-3365.

> Authorizing contest of wills and suits to cancel in the proper courts, the District Court had no jurisdiction of a suit to cancel a FOREIGN WILL, certified copy of which was filed for record in a county in which lands disposed of were situated, as authorized by Art. 5353, which provides that the validity of such will may be as the original might have been court is not the proper court within such Art. 3364-3365, which contemplates suits in courts in which wills are probated.

*Hutchen v. Dresser*, C.C.A. 196 S.W. (con's 5 # 16.)

> Giving County Court Jurisdiction of Probate Court, and Art. 3433, providing provision of a probated will shall be executed unless annulled by order of court probating it. The County Court has exclusive original jurisdiction over probate matters.

*Scudder v. Union Nat'l Bank of Chicago*, 77 U.S. 331.

> Matters bearing upon the execution, the interpretation and validity of contracts are determined by law of the place the contract is made; matters connected with its performance are regulated by the law prevailing at the place of performance.

## VOID JUDGMENTS

**Citations:**

*Maury v. Turner*, 244 S.W. 809.

> Where invalid on its face, give notice to the world that it is not authorized.

*Hamm v. Hamm*, 204 S.W. (2) 113.

> Judgment in absence of requisite jurisdiction is *VOID* and binds no one.

*Hatch v. Kubana*, 190 S.W. (2) 175.

> Where record without resort to evidence aliunde affirmatively shows the invalidity of judgment sought to be enforced, its invalidity may be pointed out by any one, in any kind of procedure, in any court, and at any time.

## FULL FAITH and CREDIT.

The Supreme Court of Texas, rendered judgment against Respondents, in *Holland v. Jackson, et al*, 37 S.W. (2) 726, July 28th, 1931, when they found at time of his death, Jackson had his domicile in California. With that issue settled, all the Courts, including Supreme Court of the United States, were bound to give this case, FULL FAITH and CREDIT.

**Citations:**

*Holland v. Jackson, et al*, 37 S.W.(2) 726. (S.Ct. of Tex.)

*Supply Co. v. Vohrees*, 202 S.W. (2) 422.

*Ware v. Ware*, 194 S.W. (2) 399.

## POWER OF ATTORNEY COUPLED WITH AN INTEREST.

**Citations:**

*Black's Law Dictionary:*

> We hold it to be clear that the interest which can protect a power after death of the person who creates it must be an interest in the thing itself.

*Leonard v. Hale*, 137 S.W. 865.

> An administrator with will annexed held authorized to exercise power of attorney.

*Bowles v. Bryant*, 247 S.W. 276, Pgh. 1.

A power of attorney coupled with an interest, cannot be revoked by the grantor of the power. 203 U.S. 126.

> The phrase coupled with an interest in connection with power of attorney, does not mean an

interest in the exercise of the power, but an interest in the property on which it is to operate.

*Farmers Loan & Trust v. Wentworth*, N.Y.S. 456.

If power has an interest it is irrevocable.

## STATEMENT.

Mrs. Sarah V. Jackson, wife of John L. Jackson, Deceased, gave Matt Atwood power of attorney, February 3rd, 1951. (Recorded in Power of Attorney Records of Tarrant County, Texas) in consideration of the interest he had in the estate of Jackson, Deceased, as compensation for work on, and his personal money spent over a period of more than Thirty (30) years, while it was being attacked by Lydick, et al.

The contest of Respondents was not legally filed in Probate Court of Travis County; it was purportedly filed May 28th, 1935; Jackson's WILL was filed in Travis County May 26th, 1926. The record shows that contest was filed NINE (9) years after Jackson's WILL was filed in Travis County; Respondents say in their petition to Supreme Court of Texas:

> "That the contestants had brought suit as contestants *without* four years after the filing of will for probate in Travis County, Texas; that the contestants had complied with the law with respect to the filing of the contest."

And further statement of same pleadings, says:

> The Court further finds that "the order of County Court of Travis County purportably creating ancillary probate proceedings in State of California is null and void and of no force and effect, and the same is hereby set aside".

The purported statements come from VOID judgment, and bind no one.

Respondents make further wrong statement, to effect that this case has been judicially determined against petitioner, when case of *Holland v. Jackson, et al*, 37 S.W. (2) 726, shows quite the opposite.

## ARGUMENT.

Domicile is main issue in this case; Supreme Court of Texas, settled that question July 28th, 1931; in spite of that decision against them, they filed their first contest in Texas Court for first time, when they presented contest to Travis County Court, Judge Matthews denied it; and told them if they were going to contest Jackson's will, they would have to go to California to start it; they were put on notice they were in wrong court; thereafter they appealed to 98th District Court, Travis County, Texas. Judge Mooré, duly Elected Judge of that Court, twice (2) denied their contest on ground of jurisdiction; sustaining Probate Court; they were again told they were in wrong Court, and they had no jurisdiction.

They had no right to call Judge from another District to hear case for third (3) time; Dan Moody, one of Lydick's Attorneys, went back to his home town, where he got Judge Dolan, to come in and render judgment for Lydick et al. Moody and all other lawyers knew they could influence Dolan; Mrs. Jackson, and Atwood, objected strenuously to Dolan being substituted, as they knew he was prejudiced, biased, and influenced. All of Dolan's acts were void, and of no effect.

However inartfully drawn, *pleadings of petitioners tell the truth;* Jackson's WILL was made in Los Angeles County, California; testating witnesses lived there; they were County Officials; Judge who heard evidence and Probated WILL, was duly Elected Judge of Los Angeles County; lawyer representing Mrs. Jackson, lived there; Mrs. Jackson was appointed Administratrix with WILL annexed without bond.

She brought Certified Copy of WILL proceedings to Texas where it was filed in Travis County, on advice of her California Attorney.

Judge Matthews of Probate Court admitted WILL to Probate Ancillary with WILL annexed without bond. Respondents filed their first contest May 28th, 1935. Judge Matthews heard their contest, and denied it; and told them from bench "if they were going to contest Jackson's WILL they would have to go to California to start it." Giving them notice they were in wrong Court. Thereafter they appealed to

98th District Court of Travis County, Texas, where Judge Moore twice denied it on ground of jurisdiction.

They had no right to call Judge from another district to hear their case 3rd time; he had no authority or jurisdiction; 98th District Court had already denied it on ground of jurisdiction.

All of Judge Dolan's acts were without authority of law, and have no jurisdiction, and all of contestants objections were based on VOID Judgment, and binds no one.

The power of attorney Mrs. Jackson, gave Matt Atwood, is power with an interest, and cannot be revoked.

The Supreme Court of Texas, in *Holland v. Jackson, et al*, 37 S.W. (2) 726; said, with issue as to domicile waived, there was no basis for the trial Courts refusal to give to the case Full Faith and Credit.

There is no predicate in law to give the Temporary Administrator the right to maintain this suit, and he has no legal right to claim this estate.

WHEREFORE, petitioner prays that the United States Supreme Court, reverse its opinion of May 5th, 1957, and grant them reconsideration, and in duty bound will ever pray, Etc.

.....

W. C. Austin,
Attorney for Petitioner.

## CERTIFICATE OF SERVICE

It is hereby certified that service of a true copy of this brief has been made on opposing counsel, J. A. Gooch, Sinclair Building, Fort Worth, Texas, by mail.

Dated ..... day of ....., 1957.

.....

W. C. Austin,
Attorney for Petitioner